

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-206

JAMES KIRK WATTS,

APPELLANT

V.

NELSON UTILITY CONSTRUCTION
and FIRSTCOMP INSURANCE
COMPANY,

APPELLEES

Opinion Delivered 19 NOVEMBER 2008

AN APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
[NO. F405776]

AFFIRMED

D.P. MARSHALL JR., Judge

James Watts worked for Nelson Utility Construction as a heavy equipment operator. He suffered a lower-back injury while driving a bulldozer. In a 2005 opinion, an administrative law judge found the injury compensable and awarded Watts reasonably necessary medical benefits and temporary total disability benefits. The Commission adopted the ALJ's opinion. Nelson Utility did not appeal. In 2006 Watts appeared again before the ALJ, this time seeking a permanent-impairment rating and other benefits not relevant to this appeal. The ALJ assigned Watts a zero-percent rating. The Commission adopted and affirmed the ALJ's opinion. Watts now appeals the permanent-impairment issue.

Watts argues that the ALJ erred by assigning him a zero-percent impairment rating because the ALJ disregarded the Commission's 2005 objective findings of injury. Those findings stated that an MRI revealed protruding discs at three levels in Watts's

back and that Watts suffered from spasms. Watts contends that both aspects of res judicata—claim and issue preclusion—apply, and that the ALJ was thus precluded from reconsidering the Commission’s earlier findings. Citing the *AMA Guides*, Watts contends he should have been awarded a seven-percent impairment rating for the three protruding discs in his back.

Res judicata principles apply to workers’ compensation cases in certain circumstances. *O’Hara v. J. Christy Constr. Co.*, 94 Ark. App. 143, 146, 227 S.W.3d 443, 445–46 (2006). But Watts is incorrect in asserting claim preclusion because he did not make a claim, in the first line of litigation, for permanent impairment. One of the elements of claim preclusion is that both suits involve the same claim or cause of action. *Winkler v. Bethell*, 362 Ark. 614, 622, 210 S.W.3d 117, 122 (2005). Just because the Commission finds an injury compensable does not necessarily mean that the injured employee is also entitled to a permanent-impairment rating. *See* Ark. Code Ann. § 11-9-102(4)(A)–(B), (F)(ii) (Supp. 2007). Compensability and permanent impairment are different claims.

Watts is also incorrect in asserting issue preclusion. One of the elements of issue preclusion is that the issue sought to be precluded must be the same as that involved in the prior litigation. *Craven v. Fulton Sanitation Serv., Inc.*, 361 Ark. 390, 394, 206 S.W.3d 842, 844 (2005). Again, compensability and permanent impairment are not one and the same. The parties did not litigate permanent impairment when the Commission determined that Watts’s injury was compensable and made its associated

findings. The Commission, therefore, was free to consider all of the evidence—including its initial medical findings and the later medical test results and opinion—in deciding whether Watts was entitled to a permanent-impairment rating.

The Commission found, in its 2005 compensability analysis, that Watts suffered both from protruding discs at three levels in his back and from spasms. But Dr. Sprinkle (Watts's treating physician) ordered a new MRI in February 2006. His impression, after viewing the new MRI's results, was that Watts suffered from lumbar degenerative disc disease and lumbar strain. Dr. Sprinkle did not note three protruding discs, only mild bulging at the bottom two levels. This medical evidence led Dr. Sprinkle to assign Watts a zero-percent impairment rating.

The Commission relied on the medical opinion and diagnosis of Dr. Sprinkle in its permanent-impairment analysis. It is the Commission's duty to weigh the medical evidence, accepting or rejecting medical opinions as the fact-finder. *Jones v. Wal-Mart Stores, Inc.*, 100 Ark. App. 17, 21, 262 S.W.3d 630, 633 (2007). The question is not whether on this record we might have reached a different conclusion than the Commission, but whether reasonable minds could reach the Commission's conclusion. *Ibid.* at 20, 262 S.W.3d at 633. They could. Substantial evidence supports the Commission's conclusion.

Affirmed.

BIRD and BAKER, JJ., agree.